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## Ecocide as an International Crime: Bold Reform or Empty Rhetoric

Nandita<sup>a</sup>

<sup>a</sup>National Law University, Delhi, India

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*Humans have long interacted with the environment. Humans first used resources for survival. Humans have used and exploited accessible and hidden resources. Using resources for advancement and survival risks humanity's existence. This dilemma requires rapid attention from international leaders, environmental experts, attorneys, and the public. Countries across the globe have legislators to solve environmental issues and crimes, maintaining the status quo. These laws and legislation only cover a "limited and precise geographical jurisdiction" and environmental crimes, leaving them to political leadership. There is no global law for pursuing environmental crimes outside national boundaries. Treaties and agreements address environmental damage-related activities. They are limited to acts banned under the agreement and its parties. No law criminalises environmental damage. Low-income developing countries suffer disproportionately because multinational firms unlawfully exploit their natural resources for profit at the price of local people and lives. Controlling environmental and resource deterioration exacerbates global inequality and subjects LDCs to systemic injustice.*

**Keywords:** *ecocide, war crimes, statute, crimes against humanity, inequality, environmental damage.*

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## INTRODUCTION

*"I have concluded that imperialism and exploitation are forms of cannibalism and are precisely those forms of cannibalism which are most diabolical or evil."*

— Jack D Forbes

Mankind and the environment have a long history of interaction and connection. Initially, the resources were utilized for human survival. The human race has employed and operated the accessible resources and exploited the hidden resources for their benefit. Nonetheless, this use of resources for progress and survival now threatens humanity's very survival.<sup>1</sup> This makes a paradoxical situation that needs immediate attention from world leaders, scientists who study the environment, lawyers, and the general public. The status quo is maintained by the fact that countries throughout the world have their legislatures and legislation to address environmental challenges and crimes. However, these laws and legislation only cover a "limited and definite geographical jurisdiction" and activities judged to be crimes against the environment and nature, leaving it up to the political leadership. There is no worldwide statute or legislation for prosecuting crimes committed against the environment beyond the borders and jurisdictions of individual nations. There are various treaties and accords aimed at addressing environmental damage-related activities dominating behaviour. However, they are confined to particular specified behaviours prohibited by the treaty and the parties to the agreement or treaty.<sup>2</sup> There is no comprehensive legislation that criminalizes activities that negatively impact the environment. Suffering is disproportionately borne by low-income developing nations whose natural resources are illegally exploited by multinational corporations for profit-generating purposes at the expense of the very survival of the people and life living in the region. This responsibility of controlling environmental and resource degradation exacerbates global inequality and leads to the LDCs being subjected to systemic injustice.

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<sup>1</sup> Mark Allan Gray, 'The International Crime of Ecocide' (1996) 26 (2) California Western International Law Journal, 215

<sup>2</sup> Anastacia Greene, 'The Campaign to Make Ecocide an International Crime: Quixotic Quest or Moral Imperative?' (2019) 30 (3) Fordham Environmental Law Review, 1

## HISTORY OF ECOCIDE

The history of ecocide tells us that the idea of ecocide itself does not possess novelty as it was first ventured by ‘Arthur Galston who used the word "ecocide" at the 1970 Conference on War and National Responsibility in Washington, D.C.’ He coined the term “ecocide” to refer to the destruction caused by a biological weapon of mass destruction by the US in the Vietnam war. A substance known as “Agent Orange” was used by the US army, causing widespread irreparable damage to the ecology and environment and causing Vietnam to surrender. This was referred to as “ecocide” during wartime by Galston, who advocated the bestowing and inclusion of ecocide as an international crime. It was included as an international crime under the Draft of the Rome Statute which later became the ICC Statute. However, it was subsequently removed from the final statute governing the proceedings of the ICC. The discussions around the legal definition of “ecocide” have been taking place for decades with omissions and additions. The latest development in this regard has been by a panel of legal experts from different parts of the world who have been engaging in the deliberations around the proposal for ecocide as an international crime. The definition is an effort by “Stop Ecocide”, an NGO, which defines ecocide as *“unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts.”* The proposed definition includes the explanation of the words wanton, severe, widespread, long-term, and environment. Wanton here means ‘with reckless disregard for damage which would be excessive concerning the social and economic benefits anticipated.’<sup>3</sup>

## THE PROPOSITION

The proposal for the inclusion of ecocide as the Fifth crime under the ICC Statute is one of the campaigns for addressing *“the severe and mass destruction of ecology and environment threatening the peaceful existence of the life present there.”* If the proposal is accepted, it would make ecocide “the fifth crime” triable by the International Criminal Court (hereinafter referred to as “ICC”) alongside the crimes of genocide, war crimes, crimes against humanity, and aggression. These

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<sup>3</sup> *Ibid*

core crimes present a similar characteristic i.e., these crimes involve actions against humans. However, ecocide seeks to address the crimes committed and wanton acts against the environment i.e., 'harm caused to humans is not a pre-requisite for prosecuting a crime or act under ecocide.'<sup>4</sup> Even if the idea is brought to the ICC soon, it will be decades before it is officially designated as an international crime that may be prosecuted by the ICC. The procedure comprises the presentation of the proposal to the United Nations General Assembly by any ICC member state. The proposal, which includes the term "ecocide," would subsequently be put to a vote by all 123 member states. A majority is required for the vote to become an official proposal in the ICC's annual assembly. After the first final draft has been developed, discussed, debated, and revised by the members, a two-thirds majority is required to approve the final language.<sup>5</sup> A year after the ratification process, the plan is implemented in the member states.

## ARGUMENTS PERTAINING TO ECOCIDE

It should be noted that the United States, China, and India are not members of the International Criminal Court (ICC), but they may be significantly affected by the implementation of this policy, which criminalizes and prosecutes the criminal activities of non-nationals on the territory of ICC member states. This gives smaller and developing nations, which are negatively impacted by the actions of multinational corporations from rich nations, a mechanism to defend their ecology and environment. Proponents of the idea argue that when the proposal is submitted to member states at the annual assembly, there will be a discernible shift in the attitude of corporate stakeholders. As the confidence of investors and the general public affects the opulence of corporations, so does investor and public

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4 Josie Fischels, 'How 165 Words Could Make Mass Environmental Destruction an International Crime', (NPR, 27 June 2021) <<https://www.npr.org/2021/06/27/1010402568/ecocide-environment-destruction-international-crime-criminal-court>> accessed 16 January 2022

<sup>5</sup> Rome Statute of the International Criminal Court Act, 1998, art.121

confidence.<sup>6</sup>As the confidence of investors and the general public affects the opulence of corporations, so does investor and public confidence.

Future stakeholder decisions and their degree of responsibility towards the environment would be influenced by the likelihood of an upcoming law criminalizing the reckless behaviours of large corporations that negatively impact the environment. Thus, pro-environmentalists hope that the proposal's introduction and the attention it garners would initiate a "domino effect" that reduces the corporate's harmful actions. In addition, political leaders who engage in malicious behavior concerning policies damaging the natural environment of their own or neighbouring nations would need to carefully weigh the consequences, since they may be prosecuted by the International Criminal Court in the future. Currently, corporate entities are penalized with fines or legal action. The corporations view the penalties issued against them as an additional input expense, disregarding the impact of their choices on the environment. In addition, the claim filed against the corporate houses shows the corporation as a legal entity, without holding individuals or leadership accountable for the damages. The proposed concept of ecocide does not require proof of malevolent intent to create ecological damage as a prerequisite for prosecution, as many ecological damages are produced unintentionally and without genuine purpose.<sup>7</sup>The environmental crimes perpetrated by MNCs will be prosecuted in the personal capacity of the corporate leadership responsible for severe, extensive, or long-term environmental harm. This will be an effective tool for prosecuting individuals and holding them accountable for their actions. Therefore, corporations and states must assume strict accountability for the effects and consequences of their actions. However, the ICC legislation excludes corporate and governmental accountability, which is also absent from the Rome Statute. Uncertainty remains around the extent of accountability faced by people under the prosecution of the International Criminal Court.

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<sup>6</sup> 'Making Ecocide a Crime' (*Stop Ecocide International*) <<https://www.stopecocide.earth/making-ecocide-a-crime>> accessed 14 January 2022

<sup>7</sup> Anastacia Greene (n 2)

## EXISTENCE OF ALTERNATIVES

There have been numerous ideas for elevating ecocide to the rank of an international crime. Legal professionals and environmental activists associated with this movement have discussed and evaluated the addition of ecocide as one of the basic crimes mentioned in the ICC statute. Upon evaluating the validity of this alternative idea, the inclusion of ecocide in the sphere of international crimes has a bleak future.

- Ecocide as a Component of Genocide: The Rome Statute defines the international crime of genocide as “If any person of any group has been attacked or targeted by another group member, whose physical integrity or social existence are violated or endangered.”<sup>8</sup>The crime of genocide entails a targeted attack by one group against another group that threatens the latter's physical or social life. The devastation of an ecosystem in such a way that the physical or cultural existence of any group of people or community inhabiting that environment is significantly harmed is an appropriate definition of ecocide.<sup>9</sup>. The need for human harm also restricts the prosecution of acts of ecocide under genocide.
- Ecocide as part of crimes against humanity: The statute of the International Criminal Court (ICC) defines crimes against humanity as the “acts committed as part of a widespread systematic attack directed against any civilian population.”<sup>10</sup> The pre-quisite conditions for the prosecution of a crime under crimes against humanity require the acts to be “directed” against “any civilian population.” The harm to the human population needs to be proved to hold any individual or state accountable for their acts. Moreover, the hierarchical order of crimes committed under genocide<sup>11</sup> provides the last spot for the crime of ecocide i.e., after the crimes of murder, extermination, and enslavement under the ICC Statute.<sup>12</sup>However, ecocide impacts the human population

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<sup>8</sup> Rome Statute of the International Criminal Court Act, 1998, art.6

<sup>9</sup> Damien Short & Martin Crook (ed), *The Genocide-Ecocide Nexus* (Routledge 2022)

<sup>10</sup> Rome Statute of the International Criminal Court Act, 1998, art.7

<sup>11</sup> Andrew Lane, ‘Ecocide In International Criminal Law- A Core Crime Or Collateral Damage?’ (*Human Rights Pulse*, 16 June 2021) <<https://www.humanrightspulse.com/mastercontentblog/ecocide-in-international-criminal-law-a-core-crime-or-collateral-damage>> accessed 25 January 2022

<sup>12</sup> Rome Statute of the International Criminal Court Act, 1998, art.7(1)

and all other species in the biosphere. The addition of ecocide as an international crime must also address the harm done to the environment or nature without causing any future harm or suffering to living beings.

- Ecocide as part of War Crimes-The word "ecocide" was coined as a result of the severe and widespread damage to the environment and ecosystem by the United States during the Vietnam War using biological weapons. In the past, nature has been harmed and destroyed as part of a military tactic intended to coerce the enemy into capitulation. This creates long-term and possibly permanent harm to the ecosystem, threatening the life and livelihood of the local population or community. However, reckless activities against the environment can include actions and decisions made during times of tranquillity.<sup>13</sup> The threat to the very survival of a people in the name of development by states and corporate houses along with the industrial accidents affecting the whole biodiversity of the ecosystem would be excluded if ecocide forms a part of the war crimes. This results in a rudimentary application of the crime of ecocide in the realm of international crimes.

The constraints posed by the inclusion of "ecocide" as one of the existing crimes under the Rome Statute led to the notion of omitting it to create an entirely new international crime of "ecocide" with its definitions, jurisdictions, and preconditions. This prevents the indirect application of the definitions of existing crimes and the bending of the law that poses "complications for the rule of law" where there are no specific articles specifying a potentially prosecutable international crime.<sup>14</sup>

## CONCLUSION

The current environmental degradation and devastation need a process of meticulous planning and rehabilitation to ensure that future generations will not be deprived of natural resources and possibilities for their existence. To reverse the damage to a certain degree, the first step in restoring the environment is sustainable development and the avoidance of acts of

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<sup>13</sup> Andrew Lane (n 11)

<sup>14</sup> *Ibid*

environmental destruction committed in the name of progress. On a global scale, the United Nations, nations, and international organizations have made attempts, but the outcomes have not been adequate. In addition to the political and economic instruments, legal tools must also be used to address the concerns and acts harming the population and the environment on a global scale. The concerns of climate change and biodiversity loss require legislation with teeth to ensure the accountability of all parties involved. If "ecocide" is added to the list of the International Criminal Court's prosecutable fundamental crimes, it would have the same standing as genocide. This would bring the matter to the attention of the global populace and governmental and business leaders worldwide.